

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK L. ST. CHARLES and U.S. POSTAL SERVICE,
POST OFFICE, Worcester, MA

*Docket No. 01-2241; Submitted on the Record;
Issued July 29, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits.

On February 13, 1988 appellant, then a 40-year-old letter carrier, sustained an acute lumbosacral strain with a bilateral radicular component while in the performance of duty when he slipped on some steps and fell onto his back.

By letter dated April 12, 2001, the Office advised appellant that it proposed to terminate his compensation and medical benefits on the grounds that the weight of the medical evidence established that he no longer had any disability or medical condition causally related to his February 13, 1988 employment injury.

By letter dated April 17, 2001, appellant stated his disagreement with the proposed termination of compensation and medical benefits.

By decision dated May 29, 2001, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that he had no residual disability or medical condition causally related to his February 13, 1988 employment injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.²

In a report dated February 14, 1998, Dr. R.A. Hemphill, appellant's attending osteopath, stated that he continued to have pain and spasms in his low back. He stated that appellant had degenerative disc disease and spondylolisthesis and was totally disabled.

In a report dated August 27, 1998, Dr. William E. Siebert, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical reports and findings on examination and diagnosed disc resorption at L5-S1 and degenerative spondylolisthesis at L5-S1 with spondylolysis. He stated that these conditions preexisted appellant's February 13, 1988 employment injury. Dr. Siebert indicated that appellant could work with restrictions.

In a disability certificate dated December 2, 1998, Dr. Hemphill stated that appellant could not work "due to chronic back pain, is on pain killers and he falls down."

In a report dated January 5, 1999, Dr. Hemphill indicated that appellant was totally and permanently disabled.

In a note dated May 5, 2001, Dr. Hemphill stated that appellant was still being treated for a chronic lumbar strain secondary to his 1988 employment injury. He stated that appellant had a disc herniation at L5-S1 which was probably compromising the nerve roots according to a magnetic resonance imaging (MRI) scan performed on July 12, 1990.

Due to the conflict in the medical opinion evidence between Dr. Hemphill, appellant's physician and Dr. Siebert, the Office referral physician, as to whether appellant had any residuals causally related to his February 13, 1988 employment injury, the Office properly referred appellant, together with the entire case file and a statement of accepted facts to Dr. William Gonte, a Board-certified internist specializing in orthopedic surgery, for an examination and evaluation in order to resolve the conflict in the medical opinion evidence.³

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

² *Wiley Richey*, 49 ECAB 166 (1997).

³ Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).

⁴ *See Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

In a report dated March 27, 2001, Dr. Gonte provided a history of appellant's condition and findings on examination. He stated:

"Extremities: Except for the right upper extremity, [appellant] had full ROM [range of motion]. There is no edema. Pulses are bilaterally symmetric. There is no atrophy or deformity. Measurements of the calves and thighs are bilaterally symmetric. He complains of right shoulder pain and had some restriction of the shoulder due to pain.

"Neurologic: He is alert and oriented times three.... Reflexes are bilaterally symmetric. Gait is good. He could heel/toe walk without difficulty. With repeated SLR [straight leg raising] test, he states he has pain in the buttocks which radiates down to the anterior thigh and down into his toes.... Cerebellar, sensory, proprioception and vibratory senses are grossly intact. His gait is normal. However, when asked to walk across the room a second time, he was noted to be limping.

"Back: Full ROM. There is no spasm, atrophy or deformity. There is no accentuation of lordosis or kyphosis. No scoliosis is noted. He states he has discomfort in the lower lumbar area on the left side around the S1 joint.

"CLINICAL IMPRESSION

"Complaint of lower back pain.

"COMMENTS

"There is no objective evidence of lumbar radiculopathy. [Appellant's] complaints of pain seem far out of proportion to any physical findings. He has inconsistencies in his complaints. [Appellant] states he has pain radiating down his leg, but does not follow any nerve root pattern. He has had a negative work-up in the past other than some noted degenerative changes which are certainly not a result of the incident in question. There is no objective evidence of any residual from the February 13, 1988 incident. [Appellant] states his legs give way on him, but there is nothing noted on examination today that would explain this. I certainly would have expected him to make a full recovery by this time.

"I reviewed the surveillance tape which shows [appellant] walking without difficulty, lifting and pushing objects without difficulty. Although he states he has not been working since 1988, the videotape was taken after that and clearly demonstrates that he was involved with work activities for several months at a time.⁵

⁵ The record shows that the employing establishment conducted an investigation regarding appellant's activities in 1996 and 1997. The investigator videotaped appellant delivering newspapers with his wife on several dates between January 8 and February 11, 1997. The investigator indicated in his report that appellant and his wife delivered newspapers at least through October 1997.

“From my standpoint, [appellant] has made a full recovery from his initial injury. His current complaints are degenerative in nature and not related to the February 13, 1988 incident.”

The Board finds that the opinion of Dr. Gonte, the impartial medical specialist, that appellant had no remaining disability or medical condition causally related to his February 13, 1988 employment injury, is entitled to special weight as his opinion is based upon a complete and accurate factual background and provides thorough medical rationale. Therefore, the Office met its burden of proof in terminating appellant’s compensation based upon the report of Dr. Gonte.

The decision of the Office of Workers’ Compensation Programs dated May 29, 2001 is affirmed.

Dated, Washington, DC
July 29, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member